Forks Development (1948) Department.

Ms SERIES.

G.O. No. 888

Dated 16 12 1948

[Despatch Abstract.]

HINDU RELIGIOUS ENDOWMENTS ACT : SECTION 75-A SCOPE AND EXTENT : CORRESPONDENCE WITH THE HIGH COURT PAPERS : RETURNED.

Firka Development Department(V)

LETTER NO. 2392 FD(V)/48-4, dated 17-9-1948.

To

The Hon'ble the Chief Justice,
The Hogh Court of Judicature at Madras,
Madras.

Hon'ble Sir,

Sub: Hindu Religious Endowments Act - Section 75-A- Scope and effect.

I am directed to address the Hon'ble Judges of the High Court on the working of section 75-A of the Hindu Religious Endowment Act. That section was introduced by Madras Act X of 1946 and the purpose was to transfer to the Hindu Religious Endowment Board the powers vested in Courts, amoung other authorities in the matter of administration of Hindu Religious Endowments. In the statement of objects and reasons relating to the Bill it was mentioned, that "new section 75-A transfers to the Board, powers of administration vested in other authorities by schemes already settled by Courts". Section 75- A of the Act expressly lays down that in cases where a scheme is settled by a Court under section 92 of the Code of Civil Procedure 1908, whether before or after the passing of Act II of 1927, all powers of administration vested by such scheme in any Court Judge, Committee or other authority or person shall be deemed to have been vested in the Hindu Religious Endowment Board and that the Board shall exercise such powers in accordance with the scheme. It has, however, been brought to the notice of Government that notwithstanding the above specific provision, statements of accounts and budgets of religious institutions for which the Courts have settled schemes continue to be submitted even now to the Courts instead of to the authorities under the Hindu Religious Endowments Act and that the Courts are exercising their powers of Administration by passing the budgets in the usual manner. As the presiding officers of Civil Courts are often burdened with heavy and responsible work of an exacting type, they cannot ordinarily devote sufficient time to the scrutiny of accounts etc., which in consequence is in practice, to be left to the subordinates with no special qualifications for the check or audit of accounts. I am therefore to enquire whether the Hon'ble Judges see any objections to the issue of intructions to the Civil Courts in the Province not to accept and pass orders, in future, on accounts and budgets presented by these institutions and, if there be no objection, to request that they will be so good as to make arrangements for the issue of suitable instructions in the matter.

2. I am to refer, in this connection to the judgement of the Hon'ble Mr. Justice Kunhiraman, dated 8-11-1946 in Application No.1839 of 1946 in C.S.No.202 of 1938 in the matter of an application made to the High Court by two worshippers of Sri Kharmaraja Temple, Choolai for the appointment of trustee under the scheme framed by the Court governing the administration of the temple in which it was held that section 75-A of the Hindu Religious Endowment Act did not affect the court's jurisdiction to appoint the trustee under the scheme. The decision was also upheld in O.S. Appeal degree No.55.of 1946. As stated in paragraph 1 above, the object of the legislation of 1946 appears to be to remove from the jurisdiction of the Civil Courts the administrative matter which are really outside the norral scope of the work of Civil Courts and to deal with which the Civil Courts hav e no adequate machinery The judgement of the Hon'ble Chief Justice in O.S. Appeal No.55 of 1946 seems to proceed on the restricted ground that the appointment of a trustee is not an act of administration. The Government therefore presume that this decision in respect of the appointment of a trustee does not affect the position in the matter of scrutiny of accounts and budgets mentioned in paragraph 1 above. which is purely an administrative function.

Yours faithfully,
10.9.48.

R.O.C. 6490/48 B1.

From

K.N.Ganpati Esquire, B.A., Bar-at-law,
Registrar, High Court of Judicature, Madras.

To

The Secretary to Government,
Firka Development Department,
Madras.

Dated 19th November 1948.

Sir,

Subject:- Hindu Religious Endowments Act - Section 75-A
Scope and Effect.

Reference:Your letter No.2392 F.D.(V)/48-4 dated 17-9-1948.

I am directed to state that the Hon'ble the Judge conside that the High Court should not on the administrative side interfere with the Judicial functions of subordinate Courts, unless it is a case which individually calls for action. In view of the Judgement of the High Court in O.S.A.No.55/46 which has been reported, the Hindu Religious Endowments Board may take such action on it as they deem fit and consider the advisability of issuing instructions to the managements of Hindu Religious Endowments to submit their accounts and b gets for scrutiny by the Board.

Yours faithfully,

Sd/-
REGISTRAR.

Firka Development Department.

Subject: Hindu Religious Endowment Act - Section 75_A
Scope and Effect .
Reference: Government letter No.2392/48-1 FD V, dated
12-9-1948.
From the Registrar High Court R.O.C.No.6490/48.B-1
dated 19-12-1948

Memo. No.2392/48.5, dated 8-12-1948.

A copy of the Correspondance that took place betw between the Government andthe High Court, Madras.on the subject mentioned above, is communicated to the President Hindu Religious Endowment Board. He is requested to consider the admisability of issuing necessary instructions to all the concerned managements of the Hindu Religious Endowments and Institutions to submit this acco and budgets for the sanctioning of the Hindu Religious Endowment Board as suggested by the High Court in the letter cited.

Yours faithfully,

Sd/-
7-12-1948.

To the Presddent, Hindu Religious Endowment Board.
(with enclosure).

Section 75-A of the Madras Hindu Religious Endowments Act (Act II of1927), expressly lays down that in cases where a scheme is settled by a Court under Section 92 of the Code of Civil Procedure, 1908, whether before of after the passing of Act II of 1927 all powers of administration vested by such scheme in any Court, Judge, Committee or other authority or person shall be deemed to have been vested in the Board and the Board shall exercise such powers in accordance with the scheme. It has been represented by the Assistant Commissioner of Hindu Religious Endowments, Tanjore (West) that notwithstanding this express provision in the Act, institutions for which the Courts have settled schemes continu to submit their statements of Accounts and Budgets to the Courts, which are still exercising their powers and passing the budgets without much scrutiny and that the managers of these institutions are trying to evade the more searching scrutiny of the Hindu Religious Endowment Board. It seems desirable to have some executive instructions issued through the High Court to the Civil Courts that in view of the express provisionin section 75-A of the Hindu Religious Endowment Act the Court should not exercise any further authority over such institutions, but should leave the budgets and the scrutiny of the Accounts to be attended to by the Hindu Religious Endowment Board.

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Please let me know whether this point was ever raised hitherto and discussed in the Secretariat. Any discussions on this subject or any files on any issue cognate to this, which may be available in the Secretariat, should be put up. After perusal of such files, it may be decided, in consultation with Legal, whether the Chief Justice High Court should be addressed for the issue of instructions to the Civil Courts in the Province.

Sd/-xxxx,
9-6-1948.

A.S. (Firka Development Department)

Section 75-A was introduced by Madras Act X of 1946 on the recommendation of the Amendment Committee under the Presidenship of Rao Bahadur Sri Venkatramana Rao, registered High Court Judge in 1944. Owing to the difficulty in the exercise of efficient supervision and control by the Board over trustees appointed by Courts under Court Schemes and who were liable to be removed only by the Courts or whose accounts and Budgets were to be approved by the Courts, it was felt necessary that all powers of administration should be exercised by the Board in accordance with the said scheme. It was for this reason, that section 75-A was enacted. The object of the said section was thus to transfer to the Board the powers vested, among other authorities, in Courts and relating to the administration of Religious Endowments. In the statement of objects and reasons for the Bill which was enacted as Madras Act X of 1946, it is stated, that "new section 75-A transfers to the Board powers of administration vested in other authorities by Schemes already settled by Courts.

In July 1946, the President, Hindu Religious Endowment Board addressed the Government for clarification of certain doubts regarding the construction of section 75-A of the Act and the Board powers under that section. The opinion of the Advocate-General was obtained in the matter and they are at page 7-15 of c.f. of G.O.No.45 E & R.E dated 28-10-1946. The Advocate-General held that the said section was enacted to vest all powers vested in Courts and the like in the old schemes for the Governance of Religious Institutions in the Board.

Contd.

Subsequently the scope of section 75-A came xxx up before the High Court for decision. The Advocate-General brought to the notice of Government that on an application made to the High Court by two worshippers of Sri Dharmaraja Temple Choolai for the appointment by the Court of a trustee under the Court Scheme governing its administration, His Lord ship Mr. Justice Kunhiraman negatived the contentions raised by him regarding the scope of said section and held that section 75-A did not affect the Courts jurisdiction to appoint the trustee under the scheme nor confirm the power of appointment on the Board. The Advocate-General was of opinion that the intention of the section in question was really to vest all powers vested in Courts in old Schemes in the Board and that expressions "powers of administration" was comprehensive to include the appointment of a trustee. He suggested the filing of a appeal by Government so that there might be a final decision in the matter . The President Hindu Religious Endowment Board agreed with the views of the Advocate General and submitted that the decision of the Hon'ble Mr.Justice Kunhiraman regarding the interpretation of section 75-A is against the spirit and intentions of Legislature in framing the section. The Government filed an appeal against the decision referred to above. The appeal was heard by the Hon'ble Chief Justice and Hon'ble Justice Mr. Govindarajachari. It was held on this appeal that section 75 -A had not withdrawn from the Court the powers which it had under the scheme to appoint a trustee. The appeal was dismissed and the judgement of the Hon'ble Mr. J ustice Kunhiraman was upheld. The copies of judgment decree are at page 5-15 c.f. of G.O.285 E&R.E dated 9-10-1947-.

In the circumstances, it seems that the Board cannot object to the exercising of the powers of appointment of trustees by the Court over the institutions for which the Courts have settled the Schemes. The reasons advanced in the matter of appointment of trustees may also be applicable to provisions in Courts Scheme laying down that accounts shall be passed by Courts and budgets, leases and investments sanctioned by the Courts. The scope of section 75-A has not been considered on any other occasion.

Legal may see for remarks.

/poor

This does not follow necessarily. It is worthwhile addressing the Hon'ble The Chief Justice in this matter. But there were same discussions on this point in connection with Maveli Srinivasa Mudaliar's endowment at Guindy for feeding/xxx hostel students . Put up these papers also.

Sd/-xxxxxx,
25-6-1948.

Submitted. Papers referrred to at 'K' above are put up at flag 'M' . The question as to the jursidiction of the Court under Section 75-A to appoint trustees for the Sri Chinnakesavaperumal Devasthanam, G.T. for which the High Court has settled a scheme for administration and the powers of the Board in interfering with the decision of the Committee appointed under the scheme by the Court in the matter of selection of students for admission into the Hostel attached to the Devasthanam, were raised by the Board in this case. It was held in consultation with Legal that the power of the Committee in discharging its functions in the matter of selection of students was not restricted in any way and it was not subject to the control supervision of any other authority, and by virtue of section 75-A the Board should be deemed to have taken the place of the Court under the schemes. Thus the only powers the Board could

Contd.

exercise are the power of appointment and that of filling up the vacancies as the Court had before section 75-A was enacted. It was also held that the Board could not exercise any higher powers than the Court.

The High Court may be addressed in the matter for clarification and for issue of instructions to Civil Courts. Legal may see for remarks in the first instance.

Sd/-xxxxxxxx,
14-7-1948.

Legal Department.

There is no objection to enquiring whether the High Court will issue instructions of the kind desired; but we should not be surprised if it raises difficulties.

S /-xxxxxxxx

Firka Development Department.

A draft letter to the Hon'ble Chief Justice is submitted. below for approval. May be circulated to Hon. Minister (Legal) and Hon. Premier.

Sd/-xxxxxxx,
31-7-1948.

I think correspondance with the High Court should normally be through the Registrar. A secretary to Government should not address the Chief Judge in a matter like this. Apart from this, thedraft admits of considerable improvement. Please revise and put up an improved draft. Even that may be scrutinised by Legal before circulation.

Sd/ xxxxxxx,
3-8-1948.

With reference to 'A' on page 4 ante, alteration is solicited to para 34 (iii) of the Madras Secretariat Manual extracted at 'F'. It will be observed that the Registrar can be addressed only in routine matter and that the general rule in the matter of communication to the High Court is to address the Hon'ble Chief Justice.

As regards 'B' on page 4 ante, a revised draft is submitted below for approval.

Legal may see before circulation.

I have amended the draft.

SdØxxxxxxxx,
10.8.

Legal Department.

Seen in Legal. The slight alterations indicated in pencil on the draft may be made. Home may also see the case, as that Department deal with Civil Courts.

Sd/-xxxxxx,
25-8-48.

Contd.

Firka Development Department.

Remarks of Legal above may be perused and the file may be sent to Home. U.O. as suggested by Legal.

Sd/-xxx x,
31-8-48.

Home Department.

The draft letter below may be perused and the case returned to the Firka Development Department.

Put up a clean copy of the draft for circulation.

Sd/-xxxxxxx,
5.9.48.

A clean copy of the draft is put up below. The case may be circulated to .

Sd/-xxxxx,
10.9.48.

/ Issued as letter No.2392/48-4 FDV dated 17-9-1948 /
From the Registrar, High Court of Judicature at Madras
Roc.No. 6490/48-B.1, dated 14-7-1948.

Please see the reply from the High Court on page 3-5 c.f. It is reported that the Hon'ble Judges consider that the High Court should not an the administrative side interfere with the judicial functions of subordinate courts, unless it is a case which individually calles for action. The Hon'ble Judges are also of the opinion that in view of the judgement of the High Court in O,S.A No.55/46, the Hindu Religious Endowment Board may take such action on it as it may deem fit and consider the advisability of issuing instructions to the managements of the Religious Institution to submit their accounts and budget for scrutiny by the Boafd. For orders whether the President Hindu Religious Endowment Board may be addressed as suggested by the High Court.

Copy of the correspondence may be communicated to the President, Hindu Religious Endowment Board for issuing necessary instructions to the managements of Hindu. Religious Endowment and Religious Institutions.

Sd/-xxxxxx,
3-12-1948.

With reference to the orders of ASSISTANT SECRETARY on page 6 ante a draft memo is submitted for approval.

Sd/-xxxxxx,
8-12-1948.

/Issued as Memo. No.2392/48-5 dated 8-12-1948/

The papers may for future reference be

G.O.Ms.No. 888 dated 16-12-1948.

R e c o r d e d .

Abstract:- HINDU RELIGICUS ENDOWMENT ACT: SECTION 75-A SCOPE AND EFFECT: CORRESPONDENCE WITH THE HIGH COURT: PAPERS RECORDED.

Sd/-xxxxx,

/True copy/

Office Assistant,
Madras Record Office.

NG.7.

No. 247/54